

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

V.

MARTIN L. GUITARD,

Defendant.

Case No. CR06-0069RSL

ORDER ON MOTION TO COMPEL DISCOVERY

This matter comes before the Court on defendant Martin Guitard’s “Motion to Compel Discovery” (Dkt. # 51). In the instant motion, Guitard requests “e-mails, copies of actual contracts between serviced oil companies and GATX/Kinder Morgan . . . ; and copies of bills of lading for fuel shipped to Harbor Island by the oil companies as a result of those contractual agreements” Motion at 1. The government responds that it does not have any of these documents, nor does it intend to use them at trial.

The government is required to provide copies of documents that are “within the government’s possession, custody, or control.” Fed. R. Crim. P. 16(a)(1)(E). The Ninth Circuit has expanded this obligation only to include items in the possession of other government agencies, to the extent that those agencies are participating in the same investigation. See United States v. Zuno-Arce, 44 F.3d 1420, 1427 (9th Cir. 1995). The subpoena provision of the Federal

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1 Rules of Criminal Procedure is the proper mechanism for a defendant's pursuit of the documents
2 of a third party. Fed. R. Crim. P. 17(c)(1).

3 Upon review of the parties' briefs and the arguments presented before the Court,
4 however, the Court concludes that the government is in a position to assist in the resolution of
5 this dispute by facilitating the victim company's cooperation in discovery. At the hearing, the
6 government indicated its willingness to work with the victim company to provide the following
7 documents to the defendant: (1) a representative bill of lading; (2) a representative pipeline
8 ticket; and (3) a representative contract between the oil companies and GATX/Kinder Morgan,
9 excised of all proprietary information. As to the third document, the Court offers the alternative
10 option of accepting a copy of a representative contract for *in camera* review in order to allow the
11 Court to make its own determination as to which parts will be provided to defendant.

12 Pursuant to these limitations, IT IS HEREBY ORDERED that defendant's "Motion to
13 Compel Discovery" (Dkt. # 51) is GRANTED IN PART.

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15 DATED this 15th day of June, 2006.

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19 Robert S. Lasnik
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21 United States District Judge
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